FILED
AUG 27 1991
OFFICE OF THE CLERK

No. 91-230

In The Supreme Court Of The United States

October * Term 1991

MICHAEL WIGLE,
Petitioner,

v.

CITY OF DETROIT,
DETROIT POLICE DEPARTMENT
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

RESPONDENTS' BRIEF IN OPPOSITION AND APPENDIX

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COUNTER-QUESTIONS PRESENTED

I. SHOULD THIS COURT GRANT THE PETITION FOR WRIT OF CERTIORARI TO REVIEW A DETERMINATION BY THE TRIAL COURT THAT THERE WAS NO FACTUAL BASIS FOR PETITIONER'S 42 USC §1983 ALLEGATIONS REGARDING POLICY OR CUSTOM?

II. IS THE MICHIGAN COURT OF APPEALS DECISION CONSISTENT WITH THIS COURT'S DECISIONS IN *CITY OF CANTON, OHIO* V *HARRIS, MONELL* V *NEW YORK CITY DEPT OF SOCIAL SERVICES*, AND *CITY OF OKLAHOMA* V *TUTTLE*?

III. WHETHER PETITIONER ERRONEOUSLY CONTENDS, CONTRARY TO THIS COURT'S DECISIONS IN *MONELL, CITY OF OKLAHOMA*, AND *PEMBAUR*, THAT THE MUNICIPALITY BE HELD LIABLE FOR THE ALLEGED ACTS OF AN OFFICER WHO WAS NOT ACTING IN ACCORDANCE WITH DEPARTMENT POLICY AND ACTING OUT OF THE SCOPE OF HIS AUTHORITY?

IV. DID THE CITY OF DETROIT RATIFY OR ADOPT THE UNCONSTITUTIONAL CONDUCT OF THE ALLEGED ASSAILANT?

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MICHAEL WIGLE,
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*

RESPONDENT'S BRIEF IN OPPOSITION AND APPENDIX

The Respondent, City of Detroit, respectfully requests that this Court deny the petition for Writ of Certiorari seeking review of the order of Supreme Court of the State of Michigan, which denied Petitioner's Delayed Application for Leave to Appeal the decision of the Court of Appeals of the State of Michigan.

OPINIONS BELOW

The Decisions of the Michigan Court of Appeals, No. 122648, 1/9/90, is not reported. It is reprinted in Respondent's Appendix (A-1).

The Order of the Michigan Court of Appeals No. 112648 denying Petitioner's Motion for Rehearing is not reported. It is reprinted in Respondent's Appendix (A-4).

The Decision of the Michigan Supreme Court for the State of Michigan denying Petitioners Delayed Application for Leave to Appeal is reported at 437 Mich 894 (1991) and is reprinted in Respondent's appendix hereto (A-5).

The Order of the Supreme Court for the State of Michigan denying Petitioner's Motion for Reconsideration of the Order Denying Leave to Appeal is not yet reported. It is reprinted in Respondent's appendix hereto (A-6).

JURISDICTION

The opinion of the Michigan Court of Appeals was entered on January 9, 1990. Petitioner's Motion for Rehearing was denied on March 12, 1990. Petitioner's Delayed Application for Leave to Appeal was denied on January 29, 1991.

The opinion of the Michigan Supreme Court denying Petitioner's Motion for Reconsideration was entered on May 7, 1991. Petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. §1257(3).

STATUTORY PROVISION INVOLVED

United States Code, Title 42:

§1983 Civil Action for deprivation of rights.

Every person who under color of any statute, ordinance, custom or usage of any state or territory of the District of Columbia, subjects or cause to be subjected, any citizen of the United States or any other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding for redress.

COUNTER-STATEMENT OF THE CASE

On May 5, 1986, Petitioner filed suit against the City of Detroit and the Detroit Police Department, alleging that on October 14, 1984, Petitioner was lawfully at or near the intersection of Michigan and Trumbull in the City of Detroit, County of Wayne, State of Michigan, during and following the final World Series Baseball game. Petitioner further alleged that he was viciously and without provocation struck on the head back and shoulders, with a club until he was unconscious.

Petitioner's position throughout the proceedings below was that he was injured as a result of an attack by an untrained Detroit Police Officer or Reserve Officer.

The Petitioner's position throughout the proceedings was that the City's policies and customs authorized the deprivation of his civil rights. Petitioner further maintained that the City's officers were inadequately instructed and that the reservists were not supervised at all.

On September 22, 1988, the City filed a Motion for Summary Disposition on the basis that Petitioner had failed to state a claim under federal law and that it was entitled to governmental immunity as to the state claims alleged. With regard to the § 1983 claims, the City argued that 1) the Complaint failed to adequately allege and show a policy or custom of the City that was a direct cause of the deprivation of a constitutional right, and 2) that there was no genuine issue of fact regarding Plaintiff's 1983 claims, as Petitioner's claims were not supported by evidence. Petitioner did not present any evidence to refute the evidence presented by Respondent to the trial court.

Contrary to the Petitioner's allegations, the evidence presented by Respondent in support of the motion consisted of deposition testimony from supervisory officers, Chief Dungy, Inspector McKinnon, Inspector Hess, and Inspector Muscat, stating that there was a policy on the proper use of the riot baton. Deposition testimony of Chief Dungy further established that every officer as part of their basic training is taught how to use the

baton and must demonstrate that knowledge before becoming an officer. (Respondent's Appendix A 10). Depositional testimony of Chief Younger and Inspector Roby established that each reservist was individually supervised by an officer. (Respondent's Appendix A-39, 43). Contrary to Petitioner, all officers are given a 16 week training program and reservists are given a 13 week training program and must pass a 200 question written exam before becoming an officer or a reserve officer. Chief Dungy further testified that every morning during roll call of the World Series, all officers including police officer reservists again reviewed the proper use of the riot baton. (Respondent's Appendix A-10). The documented evidence provided by the Respondent included the written Detroit Policy Department policy concerning use of the riot baton found in the Detroit Police Department Handbook on Crowd Formations. (Respondent's Appendix A-12-17). The policy clearly states that the baton is not to be used as a club. The policy further states that in no case is it necessary for an officer to raise the baton above his shoulders when engaging in rioters. The policy states that even warding off blows of others does not necessitate raising the baton above the head. (Respondent's Appendix A-12). Lastly, the department policy states that officers are to carry the riot baton at a forty-five degree angle with the right hand in the low position and the left hand in the high position. (Respondent's Appendix, A-14). The Petitioner testified at his deposition, that with the exception of a few, officers were holding their batons at an angle that would have been in accordance to department policy. (Respondent's Appendix A-19). Petitioner, further testified that most officers had their batons down. (Respondent's Appendix A-19). Petitioner further testified that out of all of the officers, he only saw a few officers swinging their batons; and that the officers were using the baton in a pushing and jabbing motion. (Respondent's Appendix A-20).

The record below clearly established that the policy utilized by the Detroit Police Department in the use of the riot baton was to prohibit the very type of injury suffered by Petitioner. There was no evidence presented by Petitioner, of any customary condonence of police misconduct. The evidence presented by Re-

spondent, by way of testimony from Chief Dungy, Inspector McKinnon, Sergeant Hess, Inspector Muscat, and Chief Younger repeatedly stated the proper methods of utilizing the riot baton and established that officers violating the policy regarding proper use of the riot baton, would be removed from the situation and disciplined. (Respondent's Appendix A-9, 23, 24, 26, 29, 30, 34, 40-41).

The Michigan Court of Appeals correctly addressed Petitioner's concerns regarding any reports made regarding the World Series. In the instant matter, Petitioner waited nearly three years before deposing anyone. The alleged critique of Officer Younger was merely a memo about his observations about the Pre-World Series games and supervision and suggestions of improvement. (Respondent's Appendix A-38). In no way did any report establish that there was a policy or custom of officers to club citizens over the head. The Michigan Court of Appeals correctly held that Petitioner never presented evidence of any critique to the trial court and secondly, had the opportunity to depose various supervisory officers and the opportunity to inquire about any alleged inadequate handling of crowd control. Petitioner presented no evidence to refute any evidence presented by Respondent.

After hearing two sets of oral arguments, including a motion for reconsideration, the Motion for Summary Disposition was granted by the Circuit Court on October 3, 1988.

The Michigan Court of Appeals unanimously affirmed the decision of the Circuit Court on January 9, 1990. Petitioner sought a delayed leave to appeal to the Michigan Supreme Court. On January 29, 1991, the Michigan Supreme Court, after reviewing all the briefs, unanimously denied Petitioner's Application for Delayed Leave to Appeal on January 29, 1991. Petitioner made a Motion for Reconsideration that was unanimously denied on May 7, 1991.

Petitioner, in noting the Michigan Immunity Statute, Michigan Compiled Law 691.1407, misrepresents that no case could ever be brought by an individual Plaintiff because the identity of

the assailant was unknown. Petitioner's argument lacks legal merit. Under state law it is clear that where the acts of the City are shown to be ultra vires, the City may be vicariously liable. *Ross* v. *Consumers Power Co (On Rehearing)*, 420 Mich. 567, 620; 363 N.W. 2d 641 (1984). Instead of asserting the ultra vires claim against the City, Petitioner fatally alleged that the acts of the individual officer were ultra vires, and thus argued that the City should be vicariously liable. Contrary to Petitioner, and aside from his alleged claim under 42 U.S.C. §1983, Mr. Wigle had an additional remedy under state law; Petitioner however, failed to assert it.

REASONS WHY THE WRIT SHOULD BE DENIED

SUMMARY OF REASONS

Regardless of Petitioner's allegations, the unrefuted evidence in this case was sufficient to establish the existence of a constitutional city policy.

Petitioner failed to present any evidence establishing a city policy of inadequate training or inadequate supervision, or an affirmative link connecting such a policy to a relevant constitutional deprivation.

Petitioner in response to Respondent's Motion for Summary Disposition, did not and could not show that a policy or custom of the City of Detroit regarding the proper use of the riot baton was a direct cause of a constitutional deprivation. The fact that Petitioner states that the alleged assailant was unidentified does not preclude him from alleging a claim under state law.

Petitioner's claims of multiple theories of discovery are without merit as Petitioner allowed over two years to pass after filing his complaint before taking the first step of discovery. Petitioner only began deposing officers after he was served with Respondent's Motion for Summary Disposition. Petitioner's failure to diligently act within the time allowed for discovery cannot be supplemented at a hearing on the Motion for Summary

Disposition, on the proposition, that discovery should continue at trial, via subpoena.

Lastly, and contrary to Petitioner's contention, the Court of Appeals decision was in accord with *Monell* v. *New York City Dept of Social Services,* 436 U.S. 658, 98 S.Ct. 2018, 56 L. Ed. 2d 611 (1978) and *City of Canton, Ohio* v. *Harris* 489 U.S. 381, 109 S.Ct. 1197, 103 L. Ed. 2d 412 (1989).

I. THIS COURT SHOULD NOT GRANT THE PETITION FOR WRIT OF CERTIORARI TO REVIEW A DETERMINATION BY THE TRIAL COURT THAT THERE WAS NO FACTUAL BASIS FOR PETITIONER'S 42 U.S.C §1983 ALLEGATIONS REGARDING POLICY OR CUSTOM

Petitioner is asking this Court to grant a Writ of Certiorari to decide whether the trial court abused its discretion in granting Petitioner's Motion for Summary Disposition under Michigan Court Rule (MCR) 2.116 (C)(10) in this case.

In deciding a motion made pursuant to MCR 2.116 (C) (10), the trial court is bound to act in accordance with MCR 2.116 G (4) (5), I (1). On review of a trial court's decision, the Court of Appeals must review the matter to determine if the motion was granted was an abuse of discretion.

Under MCR 2.116 (G) (4) it is well settled that:

> "A motion under subrule (C) (10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a motion under subrule (C) (10) is made and supported as provided by this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing there is a genuine issue for trial. If the adverse party does not respond, judgment, if appropriate, shall be rendered against him or her."

Under the provisions of MCR 2.116 (G) (5) the rule further states that:

> "(5) The affidavits, together, with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered when the motion is based on subrule (C) (1)-(7) or (10)."

Michigan Court Rule 2.116 (I) (1) clearly provides that:

> "(1) if the pleadings, show that a party is entitled to judgment as a matter of law or if the affidavits or other proofs show that there is no genuine issue of material fact the court shall render judgment without delay."

In the instant matter Petitioner presented no evidence to defeat Respondent's Motion under MCR 2.116 (C)(10). The Court of Appeals correctly affirmed the lower court's ruling in light of the unrefuted evidence presented by Respondents.

A. The Petition Does Not Present Issues of Significance to Warrant This Court's Review

Petitioner contends that there was lack of supervision in the instant matter and that inadequate supervision is independent from training. Petitioner's contention lacks legal and factual merit.

Petitioner in his Writ makes the unsupported allegation that the City failed to closely supervise its police. Petitioner further contends that the City failed to supervise its reserve officers and that these failures resulted in the violation of Petitioner's constitutional rights. Again Petitioner's bold allegations were not supported at the trial level or at the Court of Appeals level or at the present level by any evidence.

Petitioner's allegation regarding a lack of supervision is without factual merit or support. In support of the Motion, Respondent presented depositional testimony regarding supervision. Chief Dungy testified at his deposition that the reservists were supervised. (Respondent's Appendix A-7, 8). Chief

Younger was also deposed and testified in response to Petitioner's question, that the reservists were supervised. (Respondent's Appendix A-39).

Petitioner erroneously alleged that Inspector McKinnon saw a number of officers who were unsupervised and that this lack of supervision was the cause of the injury. What the deposition of Inspector McKinnon accurately states is that he saw some groups of two or three officers that he saw unsupervised. When asked were there significant numbers of officers unsupervised, Inspector McKinnon answered, "No." (Respondent's Appendix A-26). Inspector McKinnon further stated that he did not see any officers (reservist or not) clubbing people over the head. (Respondent's Appendix A-26). Inspector Muscat testified that if he saw an individual improperly using the baton or swinging it wildly he would remove that person. (Respondent's Appendix A-33). Inspector Muscat further testified that if he saw a person being beaten on the head by an officer or reservist and did nothing he would be derelict of his duty. (Respondent's Appendix A-34). Inspector Roby was deposed and also testified that officers were never to use the riot baton to hit over the head. (Respondent's Appendix A-44). Inspector Roby further testified that he saw no officers swinging their batons. (Respondent's Appendix A-43). Roby further testified that if an officer or reservist was beating someone over the head with a baton or nightstick he has to intervene. (Respondent's A-44). The depositional testimony from many supervisors indicated that both regular officers and reserve officers were supervised. Depositional testimony indicated that the supervisors were aware of the proper conduct to be utilized by officers and reservists in a crowd situation and were ready and trained to act on a breach of that conduct by any officer or reserve officer. A chart provided to Petitioner in response to interrogatories and to the trial court by Respondents, and also submitted to the Court of Appeals, clearly established that not only were supervisors trained, but a special effort was expended by the department towards placement of supervisory personnel at the World Series. (Respondent's Appendix A 47-61). Inspector Hess was deposed and stated that officers were never to use the baton

to hit people over the head; he further stated that such an act was prohibited. (Respondent's Appendix A-30). Inspector Hess further testified that he did not observe any officers using the batons as clubs. (Respondent's Appendix A-30). Inspector Hess also testified that the officers on mounted horses were deemed the first line officers, and appeared to 6 to 10 in number and were supervised by a first-line supervisor. (Respondent's Appendix A-28). Evidence presented by Respondent established that there was no evidence of inadequate supervision. Petitioner presented no evidence that the Police Department failed to supervise its officers, and that such a failure rose to the level of "deliberate indifference."

Petitioner erroneously contends that 'supervision' is independent of 'training' and that this Court in the *City of Canton, supra,* only addressed 'training' and not 'supervision'.

Training is inclusive of supervision. Supervisors must be trained on the proper standards of conduct to be utilized by officers and what to do in case of a breach of that required conduct. An allegation of inadequate supervision is in essence the same as an allegation of inadequate training of supervisors which could result in adequate supervision.

Petitioner's argument regarding this Court's views expressed in *City of Canton, Ohio* are misplaced.

Contrary to Petitioner this court in *Canton* dealt with inadequate supervision resulting from inadequate training. In *City of Canton*, evidence presented established that the respondent was brought to the police station in an incoherent state. After respondent was brought into the station she repeatedly fell to the floor. Eventually, the police officers left her lying on the floor to prevent her from falling again. No medical attention was even summoned for respondent. After her release respondent's family took her by ambulance to a nearby hospital where she was diagnosed as suffering from several emotional ailments. Evidence presented in *Canton* indicated that pursuant to regulation, shift commanders were authorized to determine, in their sole discretion, whether a

detainee required medical care. Evidence also established that shift commanders were not provided with any special training to make a determination as to when to summon medical care for an injured detainee.

In *City of Canton, supra,* the inadequate supervision of the shift commanders directly resulted from lack of training. If the commanders in Canton had been given the adequate supervisor training, the supervision would have been adequate.

Petitioner ignores the fact that supervisors are also trained and that a lack of training is tantamount to a lack of supervision or inadequate supervision. Petitioner's argument that training and supervising are independent is erroneous in the given context of this case and the law.

Petitioner also contends that lower federal courts have also viewed a failure to train distinct from failure to supervise. Petitioner's contention lacks factual and legal merit.

Petitioner in support of his theory erroneously cites *Kerr* v. *City of West Palm Beach,* 875 F.2d 1546 (11th Cir. 1989); *Parker* v. *Dist of Columbia,* 850 F.2d 708 (D.C. Cir. 1988), cert. den'd 109 S.Ct. 1339 (1989); *Harris* v. *City of Pagedale,* 821 F.2d 499, (8th Cir), cert. den'd 484 U.S. 986 (1984); *Bergquist* v. *County of Cochise,* 806 F.2d 1364 (9th Cir. 1986) and *Leach* v. *Shelby County Sheriff,* 891 F.2d 1241 (6th Cir. 1989), cert. den'd. 110 S.Ct. 2173 (1990).

Petitioner's reliance of *Kerr* is misplaced. The court in *Kerr,* 875 F. 2d at 1555, not only acknowledged the training and supervision issue but further stated the issues were interrelated and that the element common to both claims of supervision and training was the "failure to train" element.

Petitioner also erroneously relies on *Bergquist.* In *Bergquist* there was no discussion about separating training from supervising. In fact the court in discussing the officer's conduct simply incorporated supervisor conduct within the umbrella of officer conduct.

Petitioner also erroneously relies on *Leach*. The *Leach* decision does not focus on whether there is any difference in supervision and training. What the Court in *Leach* held in determining municipal liability was that the inmate would be required to show that his allegedly unconstitutional deprivation of medical care was based on a policy or custom of the county. *Leach* also concerns the rights of the incarcerated prisoner and thus the action is brought under the 8th Amendment of the U.S. Constitution. In *Leach*, evidence established 15 paraplegic inmates had received inadequate medical care, and further evidence established that the sheriff failed to investigate and punish the responsible parties. Unlike *Leach*, Petitioner in the instant matter presented no evidence, in light of the motion for summary disposition, that there was any failure to investigate or punish wrong doers. In fact, the deposition testimony from supervisory officers, in the instant matter, confirmed that any officer observed using the baton improperly would be removed immediately and disciplined. (Respondent's Appendix A-9, 21, 23, 26, 27, 38-39). Unlike the *Leach*, evidence in the instant matter presented by the Respondent established that every complaint would be investigated.

Petitioner erroneously relies on *Harris* v. *City of Pagedale, supra*. Again Petitioner's reliance is misplaced. In *Harris*, the evidence presented established that there existed in the city a custom of failing to investigate or act on citizen complaints of police officers sexual misconduct. Further evidence presented in *Harris*, established that the above-mentioned custom of failing to investigate or act on sexual complaints proximately caused the sexual assault of the plaintiff.

The Court in *Harris* held that a city could be liable under §1983 for the misconduct of its officers, where city officials had notice of prior police misconduct and deliberately failed to act on that knowledge.

Unlike *Harris*, Petitioner failed to present any evidence of any custom of the City of Detroit that established that complaints given to the City would not be investigated. Petitioner failed to

show that the City had any knowledge of a pattern of prior police misconduct concerning the World Series.

Petitioner also relies on *Parker* v. *Dist of Columbia, supra.* In *Parker* the evidence presented established that the officers lacked sufficient knowledge in the area of extra-jurisdictional arrest procedures. Evidence presented in *Parker* further established that officers were only given a one week course of instruction and could not in one week cover many circumstances they would confront in making an arrest in Maryland. Further evidence established that in *Parker,* the officer's training regarding extra-jurisdictional arrest authority consisted of a single memo by the head of the Repeat Offenders Program (ROP). In the instant matter there was no evidence of such inadequate training.

Petitioner's position is essentially that municipal liability should attach where evidence establishes that misconduct of both supervisors and officers results from a lack of/or inadequate training. Such a position, however, is not new and has been addressed by this court and lower courts.

Petitioner however fails to produce any evidence showing a lack of adequate training of any officer or supervisor in the instant matter. Such evidence is required under *Monell* and necessary to defeat a motion for summary disposition.

B. THE MICHIGAN COURT OF APPEALS DECISION IS CONSISTENT WITH *CITY OF CANTON, OHIO* v. *HARRIS*

In *City of Canton* v. *Harris,* 489 U.S. 381, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989), this Court held "that there are limited circumstances in which an allegation of a 'failure to train' can be the basis for liability under § 1983." (109 S. Ct., at 1204) In the *City of Canton, supra,* this Court adopted a "deliberate indifference" standard:

> . . . We hold today that the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of

> persons with whom the police come into contact. (footnote omitted) . . . (109 S. Ct., 1204)

This Court's decision in *City of Canton* and the standard of fault articulated was most consistent with its prior decisions in *Monell* v. *New York City Department of Social Services,* 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), explaining further:

> . . . .Only where a municipality's failure to train its employees in a relevant respect evidences a "deliberate indifference", to the rights of its inhabitants can such a shortcoming be properly thought of as a City "policy or custom" that is actionable under §1983. As Justice Brennan's opinion in *Pembauer* v. *Cincinnati,* 475 U.S. 469, 106 S. Ct. 1292, 1300, 89 L. Ed. 2d 452 (1986) (plurality) put it: "[M]unicipal liability under §1983 attaches where and only where a deliberate choice to follow a course of action is made from among various alternatives" by City policymakers. See also, *Oklahoma City* v. *Tuttle,* 471 U.S., at 823, 105 S. Ct., at 2436 (opinion of Rehnquist, J.) Only where a failure to train reflects a "deliberate" or "conscious" choice by a municipality- "a policy" as defined by our prior cases-can a city be liable for such a failure under §1983. (109 S. Ct., at 1205)

Respondent in the instant matter filed a Motion for Grant of Summary Disposition pursuant to Michigan Court Rule 2.116 (C)(10) that requires the court to review any evidence in the case such as depositions, affidavits, documents, etc. to ascertain if there is any dispute as to any material fact. The court in considering such a motion is to give the benefit of reasonable doubt to the non-moving party. *Rizzo* v. *Kretschmer,* 389 Mich. 363; 207 N.W.2d 316 (1973). Under MCR 2.116 (C)(10) the party opposing the motion must come forward with a showing that there is truly a dispute. If no such showing is made, summary judgment is granted.

Petitioner in the instant case presented no evidence showing that the training policies of the Detroit Police Department were

inadequate, or that the policy failed to discourage or prohibit readily foreseeable conduct. Petitioner in the instant matter presented no evidence on the City's alleged failure to train or inadequately train its officers. Petitioner in the instant matter presented no evidence that the City's alleged failure to supervise or train rose to a level evidencing deliberate indifference.

Depositional testimony and documental evidence clearly established that the policy utilized by the Detroit Police Department in the use of the riot baton was to prohibit the very type of injury suffered by Petitioner.

Petitioner has consistently made the unsupported allegation that the city failed to train reserve officers in crowd techniques. Petitioner, however, asked no questions regarding the training of the reservists at any deposition to support this allegation. Had Petitioner done so, he would have found that reserve officers are trained for 13 weeks, and given both practical (hand) and academic instruction on the proper use of the riot baton, and required to pass a 200 question exam before becoming a reserve officer. Regular officers are trained for 16 weeks and also tested and given practical and academic instruction on the proper use of the riot baton.

Petitioner's reliance on *Monell* is misplaced, where petitioner at best, has only shown that he was struck by an assailant. However, Petitioner's absence of any evidence showing that such an attack was the direct result of the Police Department's alleged policy of failing to train officers does not establish municipal liability under *Monell*. This court in *Monell* clearly held:

> ". . . . A municipality cannot be held liable *solely* because it employs a tortfeasor — or, in other words a municipality cannot be held liable under §1983 on a respondent superior theory." 56 L. Ed. 2d at 636

In the instant matter, Petitioner has at most, alleged or shown a single incident. This Court in *Oklahoma City* v. *Tuttle*,

471 U.S. 808, 85 L. Ed. 2d 791, 105 S. Ct 2427 (1985) clearly held, in establishing 42 USC § 1983 liability that:

> "Proof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by and existing unconstitutional policy, which policy can be attributed to the policymaker."
>
> 85 L. Ed. 2d at 804.

Petitioner has consistently, throughout this matter, attempted to merely allege inadequate training to support his claim, but did not, and could not, present any evidence that officers were untrained or trained inadequately.

The Court of Appeals decision is consistent with *City of Canton*. This Court in *City of Canton* attaches municipal liability only where it can be shown that the officers were either, not trained, or inadequately trained to a level evidencing "deliberate indifference."

There was a wealth of depositional testimony and documental evidence that was presented by Respondent that went unchallenged by Petitioner. Petitioner made misrepresentations of the testimony in an attempt to support his claim. The Court of Appeals reviewed the depositional and documental evidence and ruled:

> "Plaintiff next argues there was sufficient evidence to support his 42 USC 1983 claim. Defendants had an official written policy prohibiting the use of a riot baton in the manner described by plaintiff. Plaintiff nonetheless claims that officers had discretion in determining when to strike individuals with the batons. Having reviewed the depositional testimony, we believe that such discretion could be exercised only where the officer was threatened with bodily harm. Plaintiff testified that he was merely attempting to comply with an officer's order to move when he was struck and, therefore, the officer's actions would have been in violation of defendants' express policy.

> Plaintiff also claims that defendants sent untrained and unsupervised reservists into the streets with riot batons. Plaintiff concedes that he cannot identify the officer who struck him as being a reservist. In any event, having reviewed the deposition testimony, it appeared plaintiff was struck by the on-foot officer which were first in line. These officers were highly trained and supervised. Moreover, even if plaintiff were struck by a reservist in line, that reservist would have been supervised. Hence, we believe that the circuit court properly granted defendant's motion."
>
> Respondent's Appendix (A-2).

This question alone establishes that the motion for summary disposition was properly granted by the trial court, and affirmed by the Michigan Court of Appeals and this petition should be denied. The result of the Michigan Court of Appeals was correct and this case presents no questions needing clarification or resolution by this Court.

II. THE MICHIGAN COURT OF APPEALS DECISION IS CONSISTENT WITH *CITY OF CANTON, OHIO* v. *HARRIS, MONELL* v. *NEW YORK CITY DEPT OF SOCIAL SERVICES*, and *CITY OF OKLAHOMA* v. *TUTTLE*, BY IMPLICITLY HOLDING THAT THE ACTS OF A SINGLE TORTFEASOR, AMONG A HIGHLY TRAINED AND SUPERVISED POLICE DEPARTMENT, DOES NOT CONFER LIABILITY UPON A MUNICIPALITY

Petitioner in support of his argument contends that unlike the officers the police officers, the reserve officers were not trained.

As noted earlier, Petitioner presented no evidence to support his allegations. There was no testimony as Petitioner suggests that the reserve officers were not trained. Petitioner in his argument to the Court of Appeals stated that Inspector Muscat testified that the reservists are not trained in crowd control and were inexperi-

enced. A review of the deposition clearly established that what Inspector Muscat really stated was that the reservists and other police officers haven't had the specialized and extensive training regarding crowd control as those officers of the TSS unit, a specialized unit that only deals with crowd control situations. (Respondent's Appendix A-33).

Petitioner deposed high ranking officers and had a chance to inquire about the training reserve officers receive. Had Petitioner asked he would found that regular officers receive a sixteen week training period and reserve officers receive a thirteen week training period utilizing and utilized the identical training manual as the regular police officers. Had Petitioner inquired he would have ascertained that before becoming a reserve officer each candidate must pass a 200 question written examination. Had petitioner inquired, he would have known that reserve officers are taught the proper use of the riot baton and receive both practical and academic instruction on the proper use of the riot baton in crowd situations.

As earlier stated, testimony from Chief Dungy clearly established that during morning roll call each day of the World Series, both reserve officers and regular officer were given daily reinstruction on the proper use of the baton and nightstick.

The opinion below clearly shows the court's concern and detail stated in its opinion. The Michigan Court of Appeals reviewed the many depositions to determine if sufficient evidence on the issue of "no-training" or "inadequate training" had been shown in opposition to Respondent's Motion. After reviewing the depositions the Michigan Court of Appeals correctly held that the circuit court properly granted Respondent's Motion.

III. PETITIONER ERRONEOUSLY CONTENDS, CONTRARY TO THIS COURT'S DECISIONS IN *MONELL, CITY OF OKLAHOMA,* AND *PEMBAUR,* THAT THE MUNICIPALITY BE HELD LIABLE FOR THE ALLEGED ACTS OF AN OFFICER, WHO WAS NOT ACTING IN ACCORDANCE WITH DEPARTMENT POLICY AND ACTING OUT OF SCOPE OF HIS AUTHORITY

Petitioner in his writ asks this Court to ignore their previous sound decisions of *Monell, City of Oklahoma*, and *Pembaur*, and this Court's articulation on governmental immunity because the alleged assailant's identity was unknown. Contrary to previous case law, Petitioner contends that the City should be vicariously liable for the intentional torts committed by an alleged employee acting outside the scope of their authority.

The laws, contrary to Petitioner, would render the same result whether the assailant was identifiable or not, where the act of the assailant was not acting within the scope of his authority, contrary to department policy, and whose acts are clearly ultra vires.

There are many problems with Petitioner's position. First, it would open up a flood gate of possible false litigation that would be based solely on an unsupported statement that a plaintiff was hit by an unidentified officer. The spectre of horrible possibilities rears its ugly head at the thought of such a burden. Second, whenever anyone wanted to bring suit against a collectible party, they could simply lie and say an unidentifiable officer struck them and hold the municipality responsible, regardless of that municipality's fine training policies and supervision and the laws on governmental immunity. Petitioner's request in essence would be the abrogation of governmental immunity. The laws on immunity acknowledge the possibility that with thousands of municipal employees, one or two might commit tortious acts against a member of the public. The laws don't punish a municipality that actively trains its officers to do the right thing and constructs and

enforces constitutional policies, for the act of one individual tortfeasor.

Fairness, public policy, legislative intent, and the very spirit of governmental immunity require this Court to deny Petitioner's Writ.

IV. THE CITY OF DETROIT DID NOT RATIFY OR ADOPT THE UNCONSTITUTIONAL CONDUCT OF THE ALLEGED PERPETRATOR

The Court of Appeals decision is consistent with the Court's decision in *Monell* and is not applicable to the facts or decision of *Marchese* v. *Lucas* 758 F.2d 181 (6th Cir. 1985), as relied on by Petitioner.

Petitioner bases his erroneous contentions regarding ratification on a newspaper article quoting Chief Hart's praise of the police department as a whole on the handling of the World Series. Such a praise is a general assessment of the overall job and in no way logically infers that such praise is to be singularly applied to the one officer whose alleged actions were in violation of the department's policies.

Petitioner's reliance on the *Marchese* decision is misplaced. *Marchese* is not factually analogous to the instant matter. In *Marchese* plaintiff was beaten on two separate occasions after being arrested and handcuffed. At the time of the first beating several officers took part in a plan with the officer in charge of the cell. In accordance with the plan, the officer in charge of the cell, left the cell unlocked so other officers could and did enter, and plaintiff was beaten again. The court in *Marchese* held that there was knowledge that the attack was going to occur. Second, the *Marchese* Court found that the officers heard the beating and did nothing to stop it. Third, the court found that actions on the part of the sheriff's department sought, to the degree possible, to cover up the attack after it occurred. This finding was based on the subsequent concealment followed by a complete failure to initiate

and conduct any meaningful investigation on the part of the sheriff.

The facts alleged in the instant matter do not have any multiple beatings or acts of complicity and conspiracy on behalf of any groups of officers to assault and batter anyone. Further, the facts in the instant matter do not reveal any complete failure to initiate and conduct investigations on complaints. In fact the evidence given to petitioner at the Circuit Court level were in response to Petitioner's interrogatories and clearly established that each and every complaint made to the police department would be investigated. (Respondent's Appendix A 46-60).

Petitioner also erroneously relies on *Grandstaff* v. *City of Borger Texas*, 757 F.2d 161 (5th Cir. 1985). In *Grandstaff*, six officers and five patrol units conducting a stakeout mistook an innocent victim for a fugitive and killed him knowing that third parties lived in the home from which the victim's pickup had come, aware of the possibility that the innocent resident of the house could have been in the pickup, and without any warning, any hostile act or sound, poured gunfire at the pickup and into the person of the victim.

The Court in *Grandstaff* held that liability against the City would stand:

> "Where police officers know at the time they act that their use of deadly force in conscious disregard of rights and safety of innocent third parties will meet with the approval of City policy maters, the affirmative link between occurrence of various incidents of police misconduct and adoption of plans by policy showing the authorization or approval of such conduct by the city." 767 F.2d at 763.

There was no evidence presented by Petitioner in the instant matter showing that the brutal acts of assault and battery accompanied by the use of a riot baton would be met with approval by the City and the Detroit Police Department. The depositional testimony elicited from several police supervisor's stated that the riot baton was not to be used as a club, and not to be used to strike

a person above the shoulders. The depositional testimony of Inspector Roby, Inspector Muscat, Chief Dungy, Sergeant Hess, and Inspector McKinnon further established that officers who failed to adhere to the policy would be disciplined because such a violation was serious in nature.

The Court of Appeals correctly affirmed the decision of the lower court in view of all of the depositional testimony and documents presented and Petitioner's failure to present any evidence to the contrary.

In sum, there was no evidence of conspiracy, complicity, or approval by the City of any officers tortious behavior.

CONCLUSION

A Writ of Certiorari should not issue to review the opinion of the Michigan Court of Appeals. That opinion is fully consistent with this Court's decisions in *City of Canton, supra* and, *Monell* v. *New York City Dept of Social Services, supra,* the cases upon which Petitioner relys in his position that further review is necessary. Moreover, the unsufficiency of evidence on the part of Petitioner to support his position regarding § 1983 liability upon the City of Detroit is manifest.

Respectfully Submitted,

CITY OF DETROIT
LAW DEPARTMENT

DONALD PAILEN
Corporation Counsel

LEONA L. LLOYD*
Principal Assistant
Corporation Counsel
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* *Counsel of Record*

Dated: August 22, 1991

Opinion of Michigan Court of Appeals

OPINION AFFIRMING DECISION
OF THE WAYNE COUNTY CIRCUIT COURT
(Entered: Jan. 9, 1990)

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL WIGLE
Plaintiff-Appellant,

v

No. 112648

CITY OF DETROIT and
DETROIT POLICE DEPARTMENT,
Defendants-Appellees.

Before: Griffin, P.J., and Gillis and Sawyer, JJ.
PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendants' motion for summary disposition. We affirm.

Plaintiff claims that an unidentified city of Detroit police officer struck him on the head with a riot baton following the final game of the 1984 World Series. Plaintiff sued, alleging that defendants violated his constitutional rights and that they were liable for the unidentified officer's assault.

Defendants moved for summary disposition, claiming that governmental immunity barred plaintiff's state tort claims and that plaintiff's 42 USC 1983 claim was deficient because defendants had an express policy against using a riot baton as it was used on plaintiff. The circuit court granted defendants' motion.

Plaintiff first claims that defendants should be held liable for the acts of the unidentified officer, alleging that their acts were *ultra vires*. We disagree. Defendants were engaged in a governmental function and their acts did not become *ultra vires* merely because plaintiff's assailant's identity was unknown. *Ross* v *Consumers Power Co (On Rehearing)*, 420 Mich 567; 363 NW2d 641

(1984). Moreover, to the extent that plaintiff seeks to impose *respondeat superior* liability on defendants, we believe that summary disposition was properly granted. *Lowery* v *Dep't of Corrections*, 146 Mich App 342, 356-357; 380 NW2d 99 (1985), lv den 425 Mich 870 (1986).

Plaintiff next argues that there was sufficient evidence to support his 42 USC 1983 claim. Defendants had an official written policy prohibiting the use of a riot baton in the manner described by plaintiff. Plaintiff nonetheless claims that officers had discretion in determining when to strike individuals with the batons. Having reviewed the deposition testimony, we believe that such discretion could be exercised only where the officer was threatened with bodily harm. Plaintiff testified that he was merely attempting to comply with an officer's order to move when he was struck and, therefore, the officer's actions would have been in violation of defendants' express policy.

Plaintiff also claims that defendants sent untrained and unsupervised reservists into the streets with riot batons. Plaintiff concedes that he cannot identify the officer who struck him as being a reservist. In any event, having reviewed the deposition testimony, it appears that plaintiff was struck by the on-foot officers which were first in line. These officers were highly trained and supervised. Moreover, even if plaintiff were struck by a reservist in line, that reservist would have been supervised. Hence, we believe that the circuit court properly granted defendants' motion.

Plaintiff further argues that defendants ratified such actions by its officers by failing to investigate or chide officers for this behavior. Defendants' answers to interrogatories indicate that individual complaints were investigated. Moreover, as noted above, while there were situations in which an officer could use his riot baton in the manner described by plaintiff, this was not such a situation.

Finally, plaintiff contends that defendants failed to disclose critiques prepared by various supervisory personnel in response to his interrogatories which would have supported his 42 USC 1983 claim. Plaintiff learned that the critiques existed one day before the motion for summary disposition was heard. Plaintiff noted the existence of critiques during oral argument before the circuit court. Oral argument on the motion was continued the following week. Plaintiff never presented the critiques to the circuit court and he certainly had sufficient opportunity to depose the supervisory officers as to defendants' allegedly inadequate handling of crowd control. Hence, we decline plaintiff's invitation to reverse the circuit court's decision on evidence which was not presented to it.

Affirmed.

(s) Richard Allen Griffin
(s) John H. Gillis
(s) David H. Sawyer

Order of Michigan Court of Appeals

Court of Appeals, State of Michigan

ORDER DENYING MOTION FOR REHEARING

MICHAEL WIGLE v CITY OF DETROIT

Docket #112648

L. C. #85-521-715-NO

Richard Allen Griffin
Presiding Judge

John H. Gillis
David H. Sawyer
Judges

The Court hereby orders that the motion for rehearing is DENIED.

(s) Richard Allen Griffin
Presiding Judge

[SEAL] A true copy entered and certified by Norbert G. Jaworski, Chief Clerk, on MAR 12 1990

(s) Norbert G. Jaworski
Chief Clerk

Order of Michigan Supreme Court

ORDER DENYING DELAYED LEAVE TO APPEAL

(State of Michigan — Supreme Court)

(Entered January 29, 1991)

(MICHAEL WIGLE, *Plaintiff-Appellant,* v CITY OF DETROIT and DETROIT POLICE DEPARTMENT, *Defendant-Appellee* — SC: 88982; COA: 112648; LC: 85 521 715 NO)

Michael F. Cavanagh, Chief Justice;

Charles L. Levin, James H. Brickley, Patricia J. Boyle, Dorothy Comstock Riley, Robert P. Griffin, Conrad L. Mallett, Jr., Associate Justices.

On order of the Court, the delayed application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

(Certification Omitted)

Order of Michigan Supreme Court

ORDER DENYING MOTION FOR RECONSIDERATION

Order
Entered: May 7, 1991

Michigan Supreme Court
Lansing, Michigan

Michael F. Cavanagh
Chief Justice

Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

88982 (47)

MICHAEL WIGLE
Plaintiff-Appellant,

v

CITY OF DETROIT and DETROIT POLICE DEPARTMENT,
Defendant-Appellee.

SC: 88982
COA: 112648
LC: 85 521 715 NO

On order of the Court, the motion for reconsideration of this Court's order of January 29, 1991 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

20502

[SEAL] I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

May 7, 1991 (s) Corbin R. Davis
Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

MICHAEL WIGLE,
Plaintiff,

-vs- No. 85 521 715 NO

CITY OF DETROIT, DETROIT POLICE DEPARTMENT, et al,
Defendants.

The Deposition of RICHARD L. DUNGY, taken in the above-entitled cause, before Deloris Williams, (CSR-2277), Court Reporter and Notary Public in and for the County of Wayne, State of Michigan, at 3000 Cadillac Tower, Detroit, Michigan, on Wednesday, December 16, 1987, commencing at or about the hour of 9:50 a.m.

APPEARANCES:

MR. WILLIAM H. GOODMAN
Goodman, Eden, Millender & Bedrosian
3000 Cadillac Tower
Detroit, Michigan 48226
Appearing on behalf of the Plaintiff.

MR. KEVIN F. ROBBINS
City of Detroit Law Department
1010 City-County Building
Detroit, Michigan 48226
Appearing on behalf of the Defendants.

(26)

A The police reserve coordinator was there from each precinct.

Q Do you know that, or is that something you're assuming?

A I know that from the task force configuration.

Q Give me a little bit more detail how you know that? How did you check that was the case, that there were reserve coordinators from each precinct?

A I was in the initial planning stage of setting the task force together. They are sent down under the command of their individual precinct reserve coordinators. The reserve coordinators are responsible for the all during the time they are on duty.

Q That's what was supposed to happen?

A Yes.

Q How do you know that's what, in fact, did happen?

A To the best of my knowledge, that's what happened.

Q My question was: What was your system for checking that that's what happened, the reserves were properly supervised? I understand it was a very difficult situation.

A It was a chaotic situation.

Q I know that. I appreciate that. I'm not really being at all critical. I'm trying to assess or trying to come to some understanding of how clear you were in your own mind that certain things were, in fact, happening that (30) them to maintain their position, yes, there would be some pushing.

Q I would think so.

How about the mounted police officers, how did you see them using their riot batons?

Deposition of Chief Dungy

A Have you ever been in front of a horse, people naturally move. There was little or no need for those officers to use their batons.

Q And you didn't see it?

A I did not see any.

Q Did you see any of the foot officers swing any of their batons?

A No, I did not.

Q If you had seen that, what would you have done?

A I would have attempted to identify that individual, that it's an infraction that can be disciplined out for. That is a violation of the rules and practices of the department.

Q It is a serious violation?

A It is a serious violation.

Q If you had seen that, you would have attempted to deal with it in a disciplinary fashion?

A As soon as time permitted.

Q Were your other police officers instructed to do the same thing?

(31)

A Supervisors, make sure they're maintaining their place in the formation, and also to using their equipment and riot batons in a proper and safe manner.

Q I would assume in a situation like this, one of the big concerns in terms of police behavior is that concern that the police officer not swing their batons because it's so tempting to do it?

A Very true.

Q Am I right?

A That's correct.

Q One of your concerns is try and control that very element, which is naturally human instinct?

A We're there to maintain a professional demeanor at all times, and proper use of the nightstick.

Q That's right on top?

A That is correct.

Q What instruction had been given with regard to the use of nightsticks before the whole thing went down, if I can use a little bit of colloquialism?

A Pre-planning?

Q Or pre-planning, pre-instruction, pre-education, all three of those on the use of the nightstick and supervision of the —

A Let's go back to pre-education. Every officer that comes out of the academy has a certain number of hours (32) where they're instructed on proper use of the nightstick.

Q That's right from the beginning?

A That's right from the beginning.

The mounted officers, the tactical service officers normally assigned to the traffic control situations have in-service training on a regular basis where they go through the formation and use the nightsticks. That is drilled into them at all times.

The pre-planning, or the roll call of this, when these people, before they hit the street, they were again instructed that should the need come that they have to be issued a nightstick, the proper method they would be expected to use that nightstick. That was given out at the roll call shortly before the officer hit the street.

Q Was there anything specific about the World Series? Everybody knew it was coming up and there could be a problem in just remembering 1968, correct?

A Correct.

Q I assume there was some focus of attention on the seventh game before it happened and before it ended; am I right?

A This is actually the fifth game.

Q This is the fifth game?

Written Policy

DETROIT POLICE DEPARTMENT HANDBOOK ON CROWD CONTROL FORMATIONS

EXHIBIT C - DPD CROWD CONTROL HANDBOOK

I. Use of the Riot Baton

1. The baton is not for use as a club.

2. In no case is it necessary for an officer to raise the baton above his head or shoulders when engaging rioters. Even warding off the blows of others does not necessitate raising the baton above the head.

3. An officer should use the baton in the manner of a rifle with a bayonet attached, i.e., a poking, slashing or butt stroke fashion.

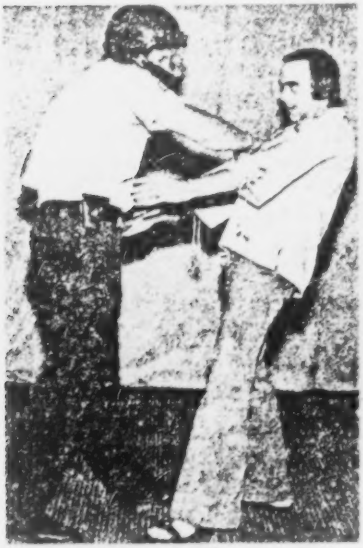
4. The diagrams illustrate blows being delivered to the head area of a rioter. While blows of this type may at times be necessary for the officer's own defense and safety, they are not advocated except in the most extreme cases.

5. Solid blows delivered to the chest, solar plexus, ribs, shoulder area, etc., are normally sufficient to cause the rioter to retreat or be subdued without causing serious injury or death.

The correct method of using the baton is with both hands on the baton. Remember, a solid blow to the body using the two hand grip is just as effective if not more effective than the one handed below.

SOLAR PLEXUS

(Jab or thrust) Step forward slightly with the left foot and, at the same time, jab hard to the opponent's mid-section with tip of the baton. The forward step and sharp thrust are essential. BURY THAT TIP.



BLOW TO CHEST

This blow involves a horizontal butt stroke into the chest area. A hard blow in this area is very effective.

BLOW TO JAW

The butt is used in this blow. It is a good follow-through after the solar plexus jab. After you strike your opponent's mid-section with the tip of your baton, you bring your right hand up in an arc to the left side of his jaw. This blow can also be used from the ON GUARD position.

The carrying position for the baton is as follows:

1. Carry Arms — Baton under the right arm held with the right hand.
2. Port Arms — Baton held approximately 45 degree angle in front of the chest. Right hand down and the left hand high.
3. At Ease — Baton held in the down position parallel with the ground, both hands on baton and in front of the body.

J. Butts Manual

A movement used in a formation as a psychological tool against a crowd and when physical contract is unavoidable. The platoon/squad leader will give the following commands:

1. "PREPARE FOR BUTTS MANUAL — (Pause) — ON GUARD"
   Officers will extend left foot approximately 15 inches coming from the Port Arms position to the On Guard position (baton held against the right side of the body, pointing at the crowd). At the same time, each officer will shout in the loudest possible voice, "Move!".

2. "FORWARD AT HALF STEP — (Pause) — MOVE"
   Officers will bring the right foot up to the rear of the left heel (forming a "T"). When the command "MOVE" is given, extend the left foot again making a quick jabbing thrust with the baton and shouting, "Move", each time the left foot is extended. After each thrust the baton is immediately returned to the On Guard position.

3. If necessary to engage rioters, the baton will be thrust hard into opponents upper body. The baton is never used as a club.

K. Communications, Arm and Hand Signals

One of the internal problems that squads of platoons will be confronted with when committed to civil disorders is maintaining adequate communications between its own members. The problem is particularly evident when deployed into control formations. Visual signals are usually sufficient when commanding a permanently organized unit that is accustomed to functioning as a team. However, if the members of a particular unit have not had the opportunity to train together, the unfamiliarity would probably result in total confusion if they attempted to operate in the same manner as a permanent unit.

1. PRIOR TO DEPLOYMENT THE SQUAD OR PLATOON LEADER MUST CONTACT EACH SQUAD AND ASSISTANT SQUAD LEADER INDIVIDUALLY, WHILE STILL IN RANKS, AND ADVISE

HIM VERBALLY OF THE DESIRED FORMATION AND POSITION.

2. PRIOR TO DEPLOYMENT EACH SQUAD AND UNIT LEADER MUST INDIVIDUALLY INFORM EACH OFFICER OF HIS UNIT OF THE DESIRED FORMATION AND HIS RESPECTIVE UNIT'S POSITION.

3. THE EXACT WORDING OF COMMANDS IS NOT AS IMPORTANT AS IS THE UNDERSTANDING OF WHAT IS DESIRED. Different wording that will accomplish the same purpose is acceptable.

4. The appropriate hand signals will *always* accompany verbal commands, which are issued downward only. Example: Platoon Leader (lieutenant) to Squad Leader (sergeant), to Assistant Squad Leader (sergeant). Police officers take their commands only from their particular unit leader.

   NOTE: See Diagram #1, Platoon Organization Chart

Written Policy

It is imperative that officers of all ranks be familiar with all of the following signals and commands:

ASSEMBLE

Raise the right hand vertically to the full extent of the arm; fingers extended and joined. Describe large horizontal circles with the arm and hand.

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

MICHAEL WIGLE
Plaintiff,

vs

Case No. 85-521-715-NO

CITY OF DETROIT, DEPARTMENT OF POLICE, a Municipal Corporation,
Defendants.

DEPOSITION OF MICHAEL WIGLE

The transcript of the deposition of Michael Wigle, taken before me, Dorian E. Harvey, Notary Public and Court Reporter, in and for the County of Wayne, State of Michigan, on Friday, March 13, 1987, at 1010 City-County Building, Detroit, Michigan, commencing at about 2:45 p.m.

APPEARANCES: WILLIAM GOODMAN, ESQUIRE
3000 Cadillac Tower
Detroit, Michigan 48226
Appearing on behalf of the Plaintiff.

KEVIN ROBBINS, ESQUIRE
Assistant Corporation Counsel
Law Department
1010 City-County Building
Detroit, Michigan 48226
Appearing on behalf of the Defendants.

ALSO PRESENT: None.

REPORTED BY: DORIAN E. HARVEY, C.S.M.R., 3157
12001 E. Jefferson Avenue, Suite A-26
Detroit, Michigan 48215
(313) 446-6944

(50)

A They were telling everybody, get off the streets. And I pointed to my cane and I said, I'm moving as fast as I can. I can't move any faster. I mean —

Q When you say they, did you see more than one police officer?

A Yes, I saw the whole phalanx. And they were just like so close together. There was really no way — they were very tight. And it looked —

Q Shoulder to shoulder?

A Yes. It was shoulder to shoulder. There were like about maybe two rows of police on foot followed by the horses behind.

Q Okay.

A The mounted division was behind this two rows that were on feet.

Q And were the mounted police officers side-by-side also across Trumbull?

A Yes. But, there was more room between the mounted.

Q Okay.

A There weren't that many mounted as much as there were the rows of the police.

Q At that point, how were these police officers holding their batons? Do you remember?

A As they started off, it seemed like they were just moving this way (indicating). I mean, then — you (51) how they —

Q Was that horizontal or angled?

A I don't know. It seemed like it was kind of like some had it horizontal, some had it at an angle.

Q Okay.

A Whatever was comfortable for them. But they were just kind of pushing the crowd.

Q And they had both hands on each end of the baton?

A Yes.

Q Okay.

A And then as it got around and as people came in contact with them, a few, just a few of them, started swinging at random.

Q Okay. Could you estimate how many you saw doing that?

A Just a few. I couldn't give you a number. It was just a small handful of them. I mean, the most of them had their batons down. But, a few of them were swinging.

Q They were swinging at some of the other fans that were in the area?

A Right, anybody who got to close to them. They just — if they got within reach of the baton, they got hit.

Q When you say swinging, how would you characterize the swing?

A Like (gesturing). I mean, like slashing type swinging.

Deposition of Inspector McKinnon

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

MICHAEL WIGLE
Plaintiff,

-vs-

Case No. 85-521-715-NO

CITY OF DETROIT, DETROIT POLICE DEPARTMENT, et al,
Defendants.

The deposition of ISAIAH MC KINNON, taken in the above-entitled cause, before Deloris Williams, (CSR-2277), Court Reporter and Notary Public in and for the County of Wayne, State of Michigan, at 3000 Cadillac Tower, Detroit, Michigan, on Thursday, September 29, 1988, commencing at or about the hour of 9:10 a.m.

APPEARANCES: MR. WILLIAM GOODMAN
MR. AMOS E. WILLIAMS
Goodman, Eden, Millender & Bedrosian
3000 Cadillac Tower
Detroit, Michigan 48226
Appearing on behalf of the Plaintiff.

MR. KEVIN ROBBINS
City of Detroit Law Department
1010 City-County Building
Detroit, Michigan 48226
Appearing on behalf of the Defendants.

(47)

Q North on Trumbull, correct?

A Right.

Q How many officers were involved in this line behind the horses?

A Probably sixteen to twenty.

Q Where were you situated with reference to that?

A I was probably right in the middle of the street.

Q Behind the line of your officers?

A Behind the line, yes.

Q Was this the first maneuver you made after you swept the street west on Michigan, — excuse me — after you swept Michigan Avenue west from Trumbull?

A I believe so. I believe so.

Q And were you watching your line of officers at all times?

A Oh, yes.

Q You saw none of those officers encounter any citizens; is that correct?

A Pushing and that kind of stuff?

Q Right.

A They told people to move.

Q Did you see any of them use any batons at all?

A No.

Q Did you see any of them swing any batons?

A No.

(48)

Q What were the department regulations with regard to how batons were to be used in crowd control situations?

A The way my people were taught is to jab, move cadence-type of situation. You don't swing the baton at anybody.

Q In your view, there's a firm department policy against swinging those batons?

MR. ROBBINS: I'm going to object with respect to this witness testifying as to policy and whether or not it was a firm policy, unless you can establish that he is a policy-maker.

Otherwise, I'm going to instruct him not to answer the question.

MR GOODMAN: Whether he's a policy-maker or not, I think he should be allowed to answer the question as to what his understanding of policy was.

MR. ROBBINS: I don't have any problem if you ask what he understands the policy to be.

MR. GOODMAN: I'll rephrase the question then.

Q (By Mr. Goodman, continuing): Dr. McKinnon, what was your understanding with regard to the department policy regarding the use of these batons in terms of swinging them?

(49)

A My understanding is that you would never swing the batons; you jab someone. When I say "never," you have to understand that if your life is threatened, that's a different type of situation. No, you never did. You jabbed.

Q I'm talking about crowd control situations?

A Crowd control, no, you jab. Smooth in the solar plexus.

Q Was it your understanding that that was an absolute rule?

A That was my understanding, yes.

Q Did you have any role in making department policy with regard to the actions of officers during crowd control situations?

A No.

Q Who made that policy?

A I would — I don't know. That's one of those situations where it probably goes up to the EDC, or deputy chiefs, but it wasn't inspectors.

MR. ROBBINS: I'm going to ask you not to speculate or guess. If you don't know, just say "I don't know."

THE WITNESS: Okay.

Q (By Mr. Goodman, continuing): What was your understanding of department policy with regard to the use of batons as it relates to the striking of citizens (50) above the shoulders?

A My understanding was that you didn't hit a person in the — above the shoulders or in the head. You didn't do that.

Q Or the neck?

A No.

Q And again, was it your understanding that this was an absolute rule?

A To the best of my knowledge, yes.

Q What was your understanding with regard to department policy in terms of the officers swinging the baton in a fashion where the baton was raised above the officers' shoulders?

A Will you please repeat that?

Q What was your understanding of department policy with regard to the swinging of a baton in such a manner that the baton was swung above the officers' shoulders?

A My understanding is you didn't do that.

Q All right. And again, your understanding was that that was an absolute policy, correct?

A Yes.

Q Did you see any of the officers under your command that day use their batons in such a fashion so as to poke any individuals in the crowd?

A Oh, yes. Yes. (65) or phalanxes?

MR. ROBBINS: Objection. the question has been asked and answered.

Q (By Mr. Goodman, continuing): Over objection, I'd like to take an answer.

A No.

Q Do you know whether such lines, or were other lines of officers moving in formations such as those?

A No, I don't know.

Q Do you know whether other officers had these batons with them that you've described, other than the TSS men?

A The big batons?

Q Yes.

A Oh, I saw other officers with them, yes.

Q Did you see how they were using those batons at all?

A Some of the officers were jabbing with the batons trying to get people, but the majority had them here, (indicating), trying to push people away.

Q Did you see any police officers swinging batons that night?

A No.

Q If you had, what would you have done?

A I would have grabbed him. Yeah, I would have grabbed him.

Q Automatically? (68) as you could determine, supervised?

A Yes.

Q Did you form any judgments at that time as to whether there were significant numbers of police officers who were outside of Tiger Stadium immediately after the end of the game who were not supervised who should have been supervised?

A Not significant numbers, but numbers.

Q And when you say "numbers," can you give me any estimate or approximation whatsoever?

A That would be difficult. That would be difficult in terms of numbers, because you're moving around so much. It would be difficult to give an exact number.

Q But you say you saw "numbers"; is that right?

A Oh, yes.

Q You saw groups, correct, of officers?

A Not groups. No. No, not groups. Two's or threes, if you're going to call that a group.

Q Did you arrive at any understanding as to why there were numbers of officers outside that stadium who were not supervised?

A As to why they were not supervised?

Q Yes.

A I had no — no, I did not.

Q Did you ever raise that issue with anybody, either your

Deposition of Sergeant Hess

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

MICHAEL WIGLE
Plaintiff.

-vs-

No: 85 521 715 NO

CITY OF DETROIT, Department of Police; a municipal corporation,
Defendant.

The Deposition of VICTOR HESS, taken in the above-entitled cause, before Deloris Williams (CSR-2277), Court Reporter and Notary Public in and for the County of Wayne, State of Michigan, at 3000 Cadillac Tower, Detroit, Michigan, on Thursday, March 12, 1987, commencing at or about the hour of 10:20 a.m.

APPEARANCES: MR. WILLIAM H. GOODMAN
Goodman, Eden, Millender & Bedrosian
3000 Cadillac Tower
Detroit, Michigan 48226
Appearing on behalf of the Plaintiff.

MR. KEVIN F. ROBBINS
City of Detroit Law Department
1010 City-County Building
Detroit, Michigan 48226
Appearing on behalf of the Defendant.

(20)

Q But you did see some faces you recognized?

A Yes, I did.

Deposition of Sergeant Hess

Q You were behind this line of officers, I gather, walking what, north on Trumbull at some point looking for Inspector McKinnon?

A We stayed in our vehicle.

Q You were driving?

A We were driving.

Q Did you see Inspector McKinnon with this line of officers?

A He was not present in the line that I saw or else we would have reported to him directly. That was our orders, report to our commanding officer.

Q How was this line of officers that you observed moving the crowd; can you describe that?

A Can you clarify that? How, what are you referring to?

Q What were they doing to push the crowd on the side streets off Trumbull Avenue?

A They were attempting to disperse the crowd, break them up in smaller groups. They were moving forward in a port arms position.

Q Tell me what you mean?

A That is carrying the riot baton at a forty-five degree angle with the right hand in the low position and left hand in the high position.

(21)

Q Show me what you mean?

A Like that in front of you, (indicating).

Q In other words, both hands on one baton?

A Yes. As they approached people, and the people did not move, then they just go out in a motion like this, (indicating), to push them back in with the baton.

Q This is a crowd control technique, I gather, this riot baton business?

A Yes, it is.

Q Something you had trained these officers in; is that correct?

A Yes, it is.

Q Is it ever appropriate to use the riot baton other than pushing people, to hit people on the head with it, let's say?

A Along with — to hit people on the head would never be appropriate. If a person was to draw a weapon, such as a knife or gun, it meant you life or his, it's —

Q Right. Other than a self-protection situation, would it ever be appropriate?

A No, it isn't. Swinging it like a baseball bat, no, that is prohibited.

Q Or using it as a club or swinging it as a baseball bat and coming down on somebody and hitting them on the head with it?

(22)

A We try to train our officers that there's different acceptable crowd control tactics and ways to use the baton. They are defensive in the sense they can be used to defend yourself. It is not necessary to use the stick in a club-type of motion.

Q All right. Did you see those batons or sticks, whatever you call them, being used as clubs at all by anybody that you observed?

A No, I did not.

Q Of course you were observing from the back; is that right?

A Yes.

Q You weren't close to the baton action, whatever it was?

A No, I was not.

Q Did you see any other formations othe. than the two or three which you've described which were moving eastward along Trumbull?

A Moving throughout the area continually back and forth were the mounted section on horses.

Q All right.

A They would come out from one point, clear a particular area off, disperse the people immediately, come to Trumbull side and go onto another crowd and move on. They were deployed, appeared to be six to ten officers and one first-line supervisor.

Deposition of Inspector Muscat

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

MICHAEL WIGLE
Plaintiff,

-vs-

Case No. 85-521-715-NO

CITY OF DETROIT, DETROIT POLICE DEPARTMENT, et al,
Defendants.

The Deposition of PATRICK H. MUSCAT, taken in the above-entitled cause, before Deloris Williams, (CSR-2277), Court Reporter and Notary Public in and for the County of Wayne, State of Michigan, at 3000 Cadillac Tower, Detroit, Michigan, on Thursday, December 17, 1987, commencing at or about the hour of 12:50 p.m.

APPEARANCES: MR. WILLIAM H. GOODMAN
Goodman, Eden, Millender & Bedrosian
3000 Cadillac Tower
Detroit, Michigan 48226
Appearing on behalf of the Plaintiff.

MR. KEVIN F. ROBBINS
City of Detroit Law Department
1010 City-County Building
Detroit, Michigan 48226
Appearing on behalf of the Defendants.

(36)

is that correct?

A No, that's not correct.

Q Tell me why that isn't correct?

A Depends on the circumstances. He's not — if I had a baton and an individual pulled a knife, I'd strike the person. There's a lot of circumstances which you can use the baton or any weapon.

Q If you saw a police officer with a baton on foot, police officer with a baton striking at individuals in the crowd, what would your response have been as a supervisor out there that day?

A Well, if an individual was improperly using his baton and swinging it wildly at individuals, I'd remove that person.

Q Let's put it this way, if you saw a police officer on foot swinging a baton at someone in the crowd, you would not automatically know whether that was a proper or improper use; is that correct?

A Correct.

Q That's your testimony?

A Right.

Q However, if you did see such an action, would you follow up on what you saw at all?

A It would depend. If I felt that I was the only person there to take action, certainly I would. But under the (37) circumstances, my primary responsibility was to move down the street with this thing, and one of the things that you're taught in crowd control is that you do not break your formation. You do not, as we say, solo.

Q I understand your point. But I think maybe I was asking my question a little inartfully. Let me try again.

What would you expect another supervising police officer to do who wasn't heading a formation, such as you were, if they saw a police officer swinging at someone in the crowd with a baton and

not knowing whether that was proper or improper use of the baton?

My question really is: Would you expect them to check it out, or would you expect them to go on to other things, assuming the police officer was acting properly?

MR. ROBBINS: I'll raise an objection. What a supervisor would have done calls for speculation on the part of this individual.

MR. GOODMAN: Over objection. Can I take an answer?

Q (By Mr. Goodman, continuing): Go ahead.

A I think you might have pictured in your mind what you want — what you're trying to get an answer to, and I don't know. I don't know what the scene is. You're (38) trying to describe something to me. Obviously if a police officer is standing over somebody straddled, beating them on the head six or seven times, and I didn't do anything, I would be derelict of duty. As a supervisor, if an officer is using his baton, if I thought someone was in danger, improperly endangering someone's life, I would certainly go take action. If I think he's using it properly, I would expect that officer to do what he's supposed to do, secure the person, use the minimal force to arrest them, and provide first aid if the person is injured, and convey the person.

Q In other words, you might or might not follow through checking it out if you saw a baton being swung?

A Depends on my circumstances.

Q Depends on the circumstances?

A Depends on my circumstances.

Q My next question is: Did you see any batons being swung out there that day by police officers?

A By police officers?

Q Yes. Well, did you see anyone else with batons?

A Yes. I saw people throwing sticks, swinging sticks at police officers. I saw a lot of bricks coming at me.

Q I want you to understand, I told Deputy Chief Dungy that I know this was an extremely tough and difficult (40)

Q All right. Now, Inspector Muscat, so far we've really talked about the line of mounted police officers and the foot officers, including yourself, in front of them?

A Correct.

Q Right?

A Right.

Q And I don't know if I asked you this, but was Deputy Chief Dungy in front of the line with you?

A I don't believe so.

Q Was there any follow-up behind the line of police officers?

A Yes, there was.

Q What was that?

A I believe it was TSS officers.

Q In what kind of formation, if any?

A I don't know if they were in a formation. I believe the TSS officers were there to handle the arrests, and then I believe the crowd after that was either reservists or other police officers that haven't had the training and experience with crowds. I think the two most experienced people in crowd control is TSS and the mounted section. I believe we were the first two ranks.

Q All right. Now, so you think TSS was behind you, behind the mounted section?

A I know some TSS members were.

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

MICHAEL WIGLE
Plaintiff.

-vs-

No. 85-521-715 NO

CITY OF DETROIT,
DETROIT POLICE DEPARTMENT
Defendants.

DEPOSITION OF DEPUTY CHIEF JAMES YOUNGER, Taken by the Plaintiff on the 29th day of September, 1988, at the offices of Mr. William Goodman, 3000 Cadillac Tower, in the City of Detroit, Detroit, Michigan, at 1:55 o'clock p.m.

APPEARANCES:

Attorney for Plaintiff:	MR. WILLIAM H. GOODMAN 3000 Cadillac Tower Detroit, Michigan 48226
Attorney for Defendant:	MR. KEVIN F. ROBBINS 1010 City-County Building Detroit, Michigan 48226
Reported by:	Carolyn Johnston, CSR-1450 Certified Shorthand Reporter

(18)

Q Now what, first of all, what were the recommendations that were made to you and what were the recommendations that you made to Dungy?

A My recommendations was that the outside of the stadium has to be kept clear. The officers have to remain on their posts. It appeared that certain times that the officers were not there. They had disappeared. They were gone and that we had to have control of those bars and those, control of the bars and the parking lots and if not, we were going to have even larger problems because you could see it building up during the course of the games that led up to the —

Q The Division Playoffs and Penant race?

A Right.

Q Now you say there were certain offices who were posted out there that had disappeared. What did you mean by that?

A Well, when it was brought to my attention and as I traveled on, they had certain posts along Trumbull outside Tiger Stadium, along Michigan Avenue. I didn't see them. They weren't there.

Q Did you every attempt to find out where these officers had gone?

A Yes, I did.

Q And what did you discover?

* * *

(21)

A Okay. At some point in time during this entire scenario I know specifically that I notified my superior of what the situation was, one. Number two, I know specifically that I called for the supervisor of these individuals to inform them exactly of what was transpiring. These particular officers who were assigned to the various particular posts, I don't know who these officers were. All I know is these posts were supposed to be manned.

Q Did you incorporate it in any written memo that you can recall at this time?

A At some point in time, and I don't know if it was after the entire series was over or before, what have you, that a critique was, I turned in a critique. I was told to turn in a critique and the critique was detailed, so. But specifically from now at this point in time I can't recall everything that was in the critique but it was critiqued.

Q Did you make any recommendations with regard to how far back the perimeter of Tiger Stadium was to be cleared? That is, was it supposed to be back just to the one side of Trumbull and Michigan avenue that was immediately adjacent to the ball park or was it to go back a half a block or a block in either direction?

A There was some recommendations made. I don't

* * *

(58)

Q You indicated there were also some ministation officers in this formation and precinct officers; is that right?

A At some points in time as I indicated, if you recall as I told you earlier, at some points in time at Trumbull and 94 there were mounted, TSS and then there were other officers, reserves precinct ministation officers that came in.

Q Who was supervising the precinct officers and the ministation officers?

A I couldn't tell you.

Q Can you tell me one way or another that they were supervised?

A I can't tell you. They had some supervision but for me to tell you that I saw their supervisor, them talking to their super-

visor, other than when I indicated to you earlier, no, I can't tell you that.

Q Who was supervising their reservists?

A Well, they have their coordinators, so I can't tell you specifically that.

Q And again whether or not the reservists were supervised can you say specifically?

MR. ROBBINS: Objection. The question has been asked and answered and I'm going to instruct him not to answer the question. You just asked that.

(62)

A No. That's forbidden.

Q Absolutely forbidden?

A That's forbidden, right.

Q Are there, is it permissible for an officer to swing with this baton?

A No, he doesn't swing the baton.

Q That's absolutely forbidden also?

A That's forbidden.

Q If a supervisor were to observe an officer in a crowd control situation such as the one that existed outside of Tiger Stadium swinging a baton at a person in the crowd, what should that supervisor do?

A Okay. If he's swinging that baton at a person in the crowd and he's swinging it, the supervisor should get over there to deal with that officer and deal with the situation depending on the situation. Okay. Now it's forbidden. You've got to deal with that

situation irregardless. You've got to deal with that situation, okay. Now, when I say depending on the situation, now if your talking about the person is stabbing at the officer with a knife or if he's got a weapon or something of that nature, you've got to get the officer out of danger first. You've got to get him out of danger, get the person disarmed and then you've got to deal with this officer in the manner in which (63) he is using that baton because he should know and should have been trained how to use it in a jab or thrust motion, okay, so he would not have to be swinging the baton. So you've got to deal with it.

Q Right. I'm not saying that 100 percent of the time the officer who was swinging with the baton will or should be disciplined, but it should always invariably be checked out; is that correct?

A It should be checked out, yes, that's correct.

Q In any crowd situation, correct?

A Given the nature and the circumstances of the situation as immediately as the situation will permit, it should be checked out.

Q Did you see any pushing with batons that particular evening during any of these sweeps in?

A Yes.

Q Did you see any thrusting or poking with the batons?

A I can't say specifically that I did but I did see pushing with the crowd control batons, yes, I did.

Q Did you see any swinging with with batons?

A No. Not to my knowledge, no.

Q Between these sweeps of Trumbull Avenue leading up to what you've described as the last sweep, what would your officers do to regroup?

A Between the sweeps?

Deposition of Inspector Roby

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

MICHAEL WIGLE
Plaintiff.

-vs-

No: 85 521 715 NO

CITY OF DETROIT, DETROIT POLICE DEPARTMENT, et al,
Defendants.

The Deposition of JAMES ROBY, taken in the above-entitled cause, before Deloris Williams (CSR-2277), Court Reporter and Notary Public in and for the County of Wayne, State of Michigan, at 3000 Cadillac Tower, Detroit, Michigan, on Wednesday, December 16, 1987, commencing at or about the hour of 2:10 p.m.

APPEARANCES: MR. WILLIAM H. GOODMAN
Goodman, Eden, Millender & Bedrosian
3000 Cadillac Tower
Detroit, Michigan 48226
Appearing on behalf of the Plaintiff.

MR. KEVIN F. ROBBINS
City of Detroit Law Department
1010 City-County Building
Detroit, Michigan 48226
Appearing on behalf of the Defendant.

(11)

Q Did you see who was supervising the reservists?

A Reservists, at that time, are normally supervised by a sworn police officer. I wouldn't be able to tell if their particular supervisor was there or not. He would look like everybody else.

MR. ROBBINS: At this point, Inspector Roby, I'm going to ask you to testify as to what you know. I don't want you to speculate as to what may have been the case. If you don't know, simply answer "I don't know."

THE WITNESS: Okay.

Q (By Mr. Goodman, continuing): Do you know if the sworn police officers had helmets on for the most part?

A I couldn't tell you that.

Q How about the reservists?

A I couldn't tell you that, either.

Q What about the presence of batons, did you see batons in the hands of police officers out there that night?

A I don't remember. There may have been. I don't remember who had batons and who didn't have batons.

Q Did you see any police officers swinging batons that night?

A No, I didn't see any officers swinging batons.

Q What is your understanding of department policy with regard to the use of batons by police officers on foot (12) in a crowd control situation?

A Well, there's two types of batons. There's the riot control batons, as well as the normal, the smaller ones.

Q Nightsticks?

A Nightsticks, we use for walking beats and all.

Q Okay.

A In the department, there's a policy that if you're talking about the hitting of people with batons.

Q Yes.

A The riot baton is used in more of a jabbing and pushing motion. If you start swinging them, they're too long. So as far as department policy, or its practices, I would say that we normally use them as a crowd control device, normally used for pushing, and maybe some poking.

Q But not free swinging?

A No. They're too unwielding for swinging.

Q What about what we call a normal baton or nightstick?

A A nightstick can be used more effectively for hitting. But the department's policy is that — as long as I've been on the department is that you don't hit above the neck or above the shoulders; that's not to be used to hit the head with. That's the best of my knowledge.

Q Now, I'm not talking about you, but I'm talking about the department policy, in general, and if a supervisor (13) sees a police officer, in this case a reservist, strike in a free swing motion a person with either a baton, a riot baton, or a nightstick, is there supposed to be some action that they are to take at that point to find out or inquire further?

A Well, I think we're left with common sense judgment in that if a police officer sees a situation like we had that night, police officer sees another officer hitting a person, normally he would pass it off as being something that just happens to be going on. However, if the officer observes another police officer brutally attacking a person, and the other person has no offense, the other officer has to intervene, because there's no crime going on there.

Q Leaving aside what one officer is to do when they see another officer using a nightstick or in a certain way, what is a

supervisor supposed to do if they see a police officer using a riot baton or nightstick in a swinging motion?

A He has to access what the situation is. You have to wait and see what happens after the blow is struck. If there's more striking and it's not called for, the supervisor has to intervene. If it's crowd control, and he hits the guy and he runs off, he doesn't chastise the police officer.

(16)

A No.

Q Okay.

MR. GOODMAN: Thank you.

MR. ROBBINS: I have a couple questions.

EXAMINATION

BY MR. ROBBINS:

Q Inspector, it's your understanding of the policy of the police department is that the baton that is used in crowd control situations is not to be used in a free wielding or free swinging manner; is that your statement?

A Yes.

Q And I think you also testified at that point that you didn't see, during this whole period, you didn't see any officer use the baton in a free swinging manner; is that correct?

A That's correct.

Q Okay.

MR. ROBBINS: I have no further questions.

RE-EXAMINATION

BY MR. GOODMAN:

Q The reason that you say the riot baton is not supposed to be used in a free swinging manner is that it would be (17) unwieldy; is that right?

My experience. The department's experience or practice is we don't use them in a free wielding manner. It's too long.

It doesn't have anything to do with the fact that it's unsafe or improper to hit somebody in that way; it's just that it's an inefficient method from the point of good police practice; is that what you're saying? No. I wouldn't want to say that. I had no hand in making the policy.

Okay.

All I know is how it's given to us.

Is that a written policy by the way on riot batons?

I couldn't tell you if it's a written policy.

I've got you.

MR. GOODMAN: Thanks a lot. It was a pleasure to meet you.

THE WITNESS: Nice meeting you, sir.

(Deposition concluded at 2:30 p.m.)

Respondent's Answer

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

MICHAEL WIGLE,
Plaintiff,

v

CITY OF DETROIT, DETROIT POLICE DEPARTMENT, et al,
Defendants.

JUDGE LUCILLE A. WATTS

Case No. 85 521 715 NO

WILLIAM H. GOODMAN P-14173
Attorney for Plaintiff

JEROME P. BARNEY P-28321
Attorney for Defendants

DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES
(Filed: Feb 07 1986)

STATE OF MICHIGAN)
) ss.
County of Wayne)

PAMELA SMALLS, being duly sworn, upon information and belief answers Plaintiff's Interrogatories as follows:

QUESTION:

1. State of name, job title, and address of the person answering these interrogatories.

ANSWER:

Pamela Smalls
Police Officer
1010 City-County Building
Detroit, Michigan 48226

Respondent's Answer

QUESTION:

2. Identify all commanders and police units which were responsible for crowd control outside of Tiger Stadium during the 1984 World Series and in particular after the game on October 14, 1984.

ANSWER:

See attached.

QUESTION:

3. State the names, job titles and address of any and all persons responsible for initial training, promulgations of procedures and any rules dealing with crowd control during, any/or in and around the 1984 World Series.

ANSWER:

See attached.

QUESTION:

4. Were any special rules, regulations, policy directives, procedures, training techniques, or standards developed in connection with crowd control for the 1984 World Series? If so:

a. State the names, addresses, and job titles of any person(s) who prepared such policies and procedures, etc.

b. State the dates upon which such policies, procedures, etc., were promulgated.

c. State the method in which said policies, procedures, etc., were promulgated to members of the Detroit Police Department.

d. Attach all said policies, procedures, etc.

ANSWER:

See attached.

Respondent's Answer

QUESTION:

5. Were any complaints filed in any form either with Professional Services Section of the Detroit Police Department through any form of litigation to the Detroit Police Commission or in any other way with regard to the actions of Detroit Police Officers in or around Tiger Stadium on the night of October 14, 1984? If so, state as follows:

a. The name, address, and job title of any such person who filed such complaint.

b. The name and address of any attorney for any person who filed any such complaint.

c. The form (whether written or verbal) of any such complaint. If written, please attach copies.

d. The nature of any and all such complaints.

ANSWER:

Yes, Complaints were filed. However, the contents of such complaints must remain privileged information in that the complainant's privacy must be protected.

QUESTION:

6. State whether or not any special reports, investigations, studies or evaluations of Detroit Police Department behavior in connection with the events outside of Tiger Stadium, in particular in the Michigan and Trumbull area, were ordered. If so, state as follows:

a. The name, address, and job title of any person who ordered such a report, investigation, evaluation, etc.

b. The name, addresses, and job titles of any and all persons who conducted said investigations, reports, evaluations, etc.

c. The form (whether written or oral of all such reports, investigations, evaluations, analyses, etc. If written, please attach.

ANSWER:

No special reports or investigations were conducted, however, each citizen complaints received were investigated individually by the Professional Standards Section.

(s) PAMELA SMALLS
Police Officer

Subscribed and sworn to before me this
6th day of February 1986

(s) Roxie Weltes
Notary Public - Wayne County, Michigan

My commission expires: May 13, 1987

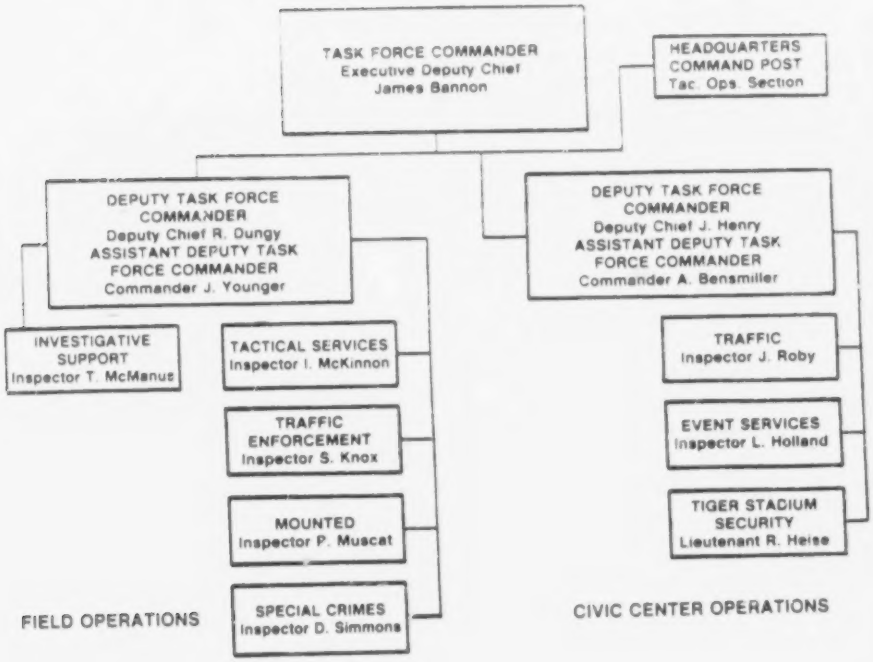
Respectfully submitted,

JEROME BARNEY P-28321
Assistant Corporation Counsel
LAW DEPARTMENT
CITY OF DETROIT
1010 City-County Building
Detroit, Michigan 48226
Phone: 224-4550
Extension 294

Detroit, Michigan

February 6, 1986

1984
DETROIT TIGERS
DIVISION PLAY-OFFS
WORLD SERIES



Respondent's Answer

INTER-OFFICE MEMORANDUM

Date: October 10, 1984

Chief of Police William L. Hart (through official channels)
OPERATIONS ORDER:
WORLD SERIES TASK FORCE #84-164

1. SITUATION

The winner of the American League Pennant, the Detroit Tigers, will play the winner of the National League Pennant. The San Diego Padres in a best of seven games series. The first two games of this series are scheduled to be played in San Diego on Tuesday, October 9, 1984 and Wednesday, October 10, 1984. The series will then move to Detroit for the next three (3) games to be played on Friday, October 12, 1984; Saturday, October 13, 1984 and if needed, on Sunday, October 14, 1984. If the series is still undecided, the teams will return to San Diego for the last two (2) games, October 16 and October 17, 1984.

Past experience dictates that if the Detroit Tigers win there will be large spontaneous celebrations in the downtown area. Celebrations of this magnitude pose the potential for serious crowd control problems and the possibility of vandalism and violence.

1.1 Schedule of Major Events

The following is a schedule of Detroit only major events presently scheduled for October 12, 13 and 14. Included is the appropriate appendix which contains the operations order or memorandum with specific information on the event.

DATE/TIME	LOCATION	EVENT	APPENDIX
October 12, 1984 8:00 a.m.-5:00 p.m.	Cobo Hall	Archdiocese of Detroit Spectrum	B

Respondent's Answer

DATE/TIME	LOCATION	EVENT	APPENDIX
October 12, 1984 8:00 p.m	Music Hall	Michigan Opera Theater	
October 12, 1984 8:00 p.m.	Cobo Hall	Rock Concert Sammy Hagard	C
October 12, 1984 8:30 p.m.	Ford Audit.	Detroit Symphony Orchestra	
October 12, 1984 8:35 p.m.	Tiger Stadium	Detroit vs. San Diego	
October 13, 1984 8:00 a.m.-5:00 p.m.	Cobo Hall	Archdiocese of Detroit Spectrum	B
October 13, 1984 10:00 a.m.	Downtown	Stroh's Run for Liberty	D
October 13, 1984 12:00 noon-4:00 p.m.	Kennedy Sq.	Outreach Ministry	E
October 13, 1984 1:30 p.m.	Tiger Stadium	Detroit vs. San Diego	
October 13, 1984 7:30 p.m.	Joe Louis	Red Wings vs. New Jersey	
October 13, 1984 8:00 p.m.	Cobo Hall	Wrestling	
October 13, 1984 8:00 p.m.	Music Hall	Michigan Opera Theater	
October 13, 1984 8:30 p.m.	Ford Audit.	Detroit Symphony Orchestra	
October 14, 1984 8:00 a.m.	Cobo Hall	Detroit Police Exam	
October 14, 1984 8:00 a.m.	Cobo Hall	Black College Fair	F
October 14, 1984 9:00 a.m.	Belle Isle	Free Press Marathon	G
October 14, 1984 1:30 p.m. and 6:30 p.m.	Music Hall	Michigan Opera Theater	
October 14, 1984 3:30 p.m.	Ford Audit.	Detroit Symphony Orchestra	
October 14, 1984 4:45 p.m.	Tiger Stadium	Detroit vs. San Diego	

1.2 Reference

Complete schedule of World Series activities planned in Detroit is contained in Appendix H.

1.3 History

The last time Detroit was in a World Series was in 1968 and when Detroit won, spontaneous street celebrations occurred creating significant crowd control problems and sporadic criminal acts.

2. MISSION

Under the overall direction of the Task Force Commander, the Tiger World Series Task Force must ensure a safe and secure environment for related activities.

Accordingly, the Task Force is divided into three areas of responsibilities. The specific objectives of each entity are delineated as follows:

2.1 Civic Center Operations : Objectives

a. Will provide traffic personnel to ensure the safe and orderly flow of vehicular and pedestrian traffic.

b. Will provide police personnel for interior security at events occurring at Joe Louis Arena, Cobo Arena, Cobo Hall and Tiger Stadium.

c. Will provide police personnel for security and traffic control at selected major functions occurring within the downtown area.

d. Will take proper police action when necessary to ensure a safe and secure environment for scheduled activities.

e. Will provide supplemental traffic personnel at selected hotel sites on a need basis.

Respondent's Answer

2.2 Field Operations: Objectives

a. Will provide for the safety and security of persons within their primary patrol area.

b. Will prevent the damage and/or destruction of both public and private property.

c. Upon proper authority will provide professional assistance when requested by dignitaries and/or State Police agencies.

d. Will provide a Strike Force for deployment, if necessary, to prevent the disruption of authorized activities or functions.

e. Will, upon proper authorization, provide traffic escorts for designated movements of individuals or groups.

f. Will provide investigative support for major case follow-up and mass prisoner processing.

g. Will provide supplemental plainclothes patrol to the downtown area.

2.3 Headquarters Command Post: Objectives

a. Will be responsible for maintaining a comprehensive log of events taking place, and incidents of a noteworthy nature.

b. Will stay apprised of all information and general conditions relative to World Series activities.

c. Will ensure that the directives of the Task Force Commander or his designee are disseminated to operational personnel.

d. Will monitor closed-circuit television coverage of the Civic Center area.

e. Will maintain maps illustrating designated sites for World Series activities.

f. Will request and provide the necessary equipment needs of other entities within the Task Force.

3. EXECUTION

Appendix "A" contains a complete organizational structure of command officers for the World Series Task Force for each day.

4. CONCEPT OF OPERATION

The complete World Series Task Force will be activated for Friday, October 12, 1984; Saturday, October 13, 1984 and for Sunday, October 14, 1984, if Game #5 is played.

Task Force elements will adjust their times to overlap game times at the direction of the Assistant Task Force Commander.

Task Force elements will adjust their times for Tuesday, October 16, 1984 and Wednesday, October 17, 1984 if the series returns to San Diego. These games will be starting at 8:25 p.m. and should the Tigers win while away there is still a possibility of spontaneous celebrations in Detroit.

On Sunday, October 14, 1984, personnel taking the promotional exam that comprise the Strike Force shall report for duty after completion of the exam. They will report as directed by the Task Force Commander.

On Sunday, October 14, 1984, personnel assigned to the Free Press Marathon shall not be released after the completion of the detail. They will report as directed by the Task Force Commander.

4.1 Concept — Civic Center Operations

a. Personnel from the Special Events Section will provide the primary stationary traffic control under the traffic plan outlined in Appendix "J" for Tiger Stadium World Series.

b. Personnel assigned to initial security functions will perform those duties and responsibilities outlined in Appendix "I".

c. Personnel from the Mini-Station Section will augment Special Events Section personnel in providing police service to other events occurring in the downtown area as outlined in previously submitted manpower requests.

d. Personnel from the Tactical Operations Section will provide coordination to the supervisors from Civic Center Operations to ensure that details are properly staffed.

e. Personnel from the Tactical Operations Section will perform liaison functions between the promoters of playoff events and the various elements of the Task Force.

f. Personnel assigned to interior security functions will enter onto the playing field in the later part of the #9th inning to protect the players only.

g. Mini-Station patrol personnel will supplement Tactical Services Section with exterior patrol to Tiger Stadium.

4.2 Concept — Field Operations

a. Tactical Services Section personnel will patrol the immediate exterior of Tiger Stadium for crowd control.

b. At the direction of the officer in charge of traffic control, officers on traffic posts may be ordered to barricade their posts and divert the traffic flow away from the stadium.

Respondent's Answer

c. Patrol and traffic personnel assigned to Field Operations will provide supplemental patrol and police service to the downtown area through motorized and horse patrol at the direction of the Task Force Commander.

d. The Strike Force Unit shall provide crowd control and security if necessary in affected areas at the direction of the Task Force Commander.

e. Each precinct will place a squad sergeant, four (4) police officers on active reserve for deployment as a supplemental strike force if required.

f. Investigative Operations personnel will continue to function under their normal organizational structure, and in addition, receive those specialized assignments as are determined by the Task Force Commander.

g. The Special Crime Section will assign patrol personnel for downtown patrol at the direction of the Task Force Commander and commensurate with prior commitments.

h. The Tactical Services Section will provide the prisoner bus for this detail. This bus will be parked at a location to be determined by the Task Force Commander.

i. The Third Precinct and the Special Events Section will provide their autos on stand-by for this detail.

j. The Third Precinct and the Special Events Section will provide tow trucks for this detail.

k. The Tactical Services Section will provide an escort for the Detroit Tigers players' buses from Metropolitan Airport when they arrive from San Diego.

4.3 Concept — Headquarters Command Post

a. The Tactical Operations Section will staff the Headquarters Command at the direction of the Task Force Commander. The command post will be staffed for all three world series games in Detroit. If the need arises, the command post will be staffed for the 6th and 7th games played in San Diego.

In addition, Tactical Operations Section personnel will provide staff coordination for other major events occurring within this time frame.

5. ADMINISTRATION AND LOGISTICS

5.1 Normal winter uniform attire will be worn for personnel assigned to this detail.

5.2 Headquarters Command Post

a. Hours of operation are as follows:

Friday, October 12, 1984	6:00 p.m. - 2:00 a.m.
Saturday, October 13, 1984	12:00 noon - 8:00 p.m.
Sunday, October 14, 1984	2:00 p.m. - 10:00 p.m.
Tuesday, October 16, 1984 and Wednesday October 17, 1984	At the direction of the Task Force Commander.

5.3 Civic Center Operations — Roll Calls

a. Roll calls for personnel assigned to Civic Center operations will be conducted according to the times stipulated in the applicable appendix for each event.

5.4 Field Operations Roll Call

a. Personnel assigned to Field Operations from the Tactical Services Section, Traffic Section, Mounted Section and Special Crimes Section will have roll call at their normal times, or alter their roll calls only at the direction of the Task Force Commander. Roll call times may be adjusted on the dates of the World Series games played either in Detroit or San Diego to provide optimum coverage.

5.5 Arrest Procedures

a. Normal arrest procedures will be in effect.

b. In the event of mass arrests due to disturbance, the Deputy Task Force Commander in charge of field operations will provide sufficient personnel for prisoner processing.

c. The Headquarters Command Post shall be notified on all arrests related to Tiger World Series activities.

5.6 V.I.P. PARKING FOR THE WORLD SERIES

a. Four (4) spaces will be alloted at Michigan and Cochrane for Mayor Coleman A. Young and the mayor of San Diego.

b. V.I.P. limousines will be allowed to park on Michigan between Cochrane and Trumbull.

c. V.I.P. limousines with green parking passes issued by the Detroit Baseball Company will park in the main lot inside the stadium.

d. Employees with red parking passes issued by the Detroit Baseball Company will park on Kaline Drive between Cochrane and Trumbull.

e. News media vehicles will be allowed to park on Cochrane from Michigan to Kaline Drive.

—*Respondent's Answer*

6. COMMUNICATIONS

6.1 Channel Five (5) has been reserved for the Tiger Playoff Task Force.

Respondent's Answer

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

MICHAEL WIGLE,
Plaintiff,

v

CITY OF DETROIT, ET AL,
Defendants.

JUDGE LUCILE A. WATTS

Case No. 85 521 715 NO

AFFIDAVIT OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

DELPHINE JONES, being first duly sworn, deposes and says that she is employed by the City of Detroit and that on February 7, 1986, she served a copy of the following DEFENDANTS ANSWERS TO PLAINTIFF'S INTERROGATORIES upon the following attorney of record at the designated address by placing same in properly addressed envelope and depositing same in the United States mail, first-class, postage prepaid:

William H. Goodman
Attorney at Law
3000 Cadillac Tower
Detroit, Michigan 48226

(s) DELPHINE JONES

Subscribed and sworn to before me
this 7th day of February, 1986

(s) David T. Clements
Notary Public, Wayne County, Michigan
My commission expires: 10-4-89